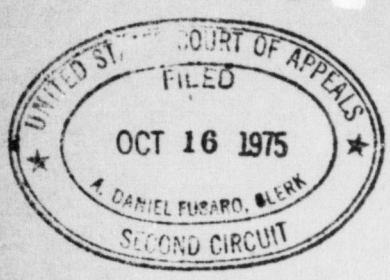
United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-7302

T-4814



IN THE

SECOND CIRCUIT COURT OF APPEALS OF THE UNITED STATES

NO. T - 4814
(1975)

B P/S

DONALD SCHANBARGER,

Plaintiff - Appellant,

v.

JOHN J. McNULTY, Jr.,

Defendant - Appellee.

APPEALED ORDER OF JUDGMENT OF DISMISSAL OF COMPLAINT

BY THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLANT, SUBMITTED

DONALD SCHANBARGER
Pro Se
Ferguson Lane
West Hebron, New York
Office Address
Salem, New York 12865
Post Office Address
Telephone Number: None

[redacted]

BRIEF I N D E X

CITATIONS

Statement Of The Issues Presented For Review

The issues are whether the 14th Amendment of the federal Constitution requires a county sheriff to supply his inmates with facilities to:

(a) Obtain writing paper at will for legal mail,

(b) To place mail for mailing more then 3 days a week, or 2 days a week should one day fall on a federal holiday,

(c) To mail legal mail that is not on printed stationary,

(d) Dental care with the exception of extracting teeth,

(e) Access to a library with criminal law books that would be needed to defend ones self from incarceration, and

(f) Jail clothes,

And if an injunction against future incarceration of anyone without such facilities, and punitive and exemplary damages, costs and attorney fees are assignable for the lack thereof, all of which a district court must take judicial notice with and/or without request?

The framed questions are

1. Whether A FEDERAL COURT FAILING TO TAKE JUDICIAL NOTICE OF THE UNITED STATES CONSTITUTION WITH OR WITHOUT REQUEST, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 8th, 9th, & 10th AMENDMENTS AND EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS CLAUSES OF THE 5th & 14th AMENDMENTS OF THE FEDERAL CONSTITUTION, WHEN EVERY MEMBER OF THE UNITED STATES JUDICIARY HAVE AGREED TO SUPPORT IT AS A CONDITION OF THEIR OFFICE AS SUCH A MEMBER?

2. Whether A COUNTY SHERIFF IN FAILING TO SUPPLY HIS INMATES IN HIS JAIL WITH ACCESS TO A LIBRARY WITH CRININAL LAW BOOKS THAT WOULD BE NEEDED TO DEFEND ONE'S SELF FROM INCARCERATION VIOLATES THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN A HIRED DEFENCE WHETHER INNOCENT OR GUILTY FALLS WITHIN THE DOCTRINE OF WASTE.

Statement Of The Case

Donald Schanbarger when incarcerated in a county jail by Sheriff John J. McNulty, was not supplied facilities that he would had used to:

(a) Obtain writing paper at will for legal mail,

(b) To place mail for mailing more then 3 days a week, or 2 days a week should one day fall on a federal holiday,

(c) To mail legal mail that is not on printed stationary,

(d) Dental care with the exception of extracting teeth,

(e) Access to a library with criminal law books that would be needed to defend ones self from incarceration, and

(f) Jail clothes. (App. 1 Complaint 42 U.S.C. Sec. 1983 VIOLATION) Donald Schanbarger moved for an injunction against future incarceration of anyone without such facilities, punitive and exemplary damages, costs and attorney fees. Motion was made before answer to the complaint, that the complaint be dismissed (App. 2-6 Motion to dismiss complaint). Over the objection of plaintiff (App. 6-7 Cross motion) the complaint was dismissed by the District Court. (App. 8-13 Order) The framed question #1. that a federal court must take judicial notice of the federal Constitution with or with- request was raised in the Complaint (App. 1-2), and #2, that a county jail must supply a law library with books needed to defend ones self from incarceration in Cross motion (App. 7). The dismissal of the Complaint is based on poor pleading (App. 11-12 Order) and insufficiency (App. 12 Order). Donald Schanbarger assurtes Article 3 Sec. 2., and the 14th Amendment of the federal Constitution. (1)

POINT 1.

THE COMPLAINT S H O W S RECOGNIZABLE VIOLATIONS OF THE FEDERAL CONSTITUTION

The United States Supreme Court is in unanimus agreement that there is a due process right to legal assistance in the preparation of habeas corpus petitions (JOHNSON v AVERY, 393 US 483 which also applies to Civil Rights suits. Presumably being able to obtain writing paper at will for legal mail (3a), to place mail for mailing more than three days a week or two days a week should one day fall on a Federal holiday (3b), to mail legal mail that is not on jail printed stationary (3c), and access to a library with criminal law books that would be needed to defend ones self from incarceration (3e) of the Complaint (App. 1) would be supported by JOHNSON. For obivious reasons if legal mail is not to be sent to a court from jail when it is ready and on what ever paper, one has limited access to a court or courts, and when an inmate does not have access to meaningfull law books, access to any court should be expected to be meaningless. The observation of the appealed Order (App. 11) "that there is no contention that the result was denial of access to the courts" in respect to sending mail demonstrates a lack of observance of Federal RCP 9b.

Jail practices which result in deprivation of adequate medical treatment are actionable (CAMPBELL v BETO, 460 F2d 765), thus lack of dental (3d) of the Complaint (App. 1) with the exception of extracting teeth it would seem is actionable. The appealed Order finds that "Medicial treatment claims must allege deliberate indifference to its need" (App. 11)and finds "law book deprivation

POINT 1.

is lacking" (in the complaint) (App. 12) demonstrates a lack of observance of Federal RCP 9b by the District Court and treating par. 4. of the Complaint assurtion that the denied facilities of the complaint were "wilfully denied by the defendant" (App. 1) as meaningless. The word willfully leaves little for construction.

Jail clothes (Complaint App. 1) certainly is a requirement of a jail. It may well be remembered that inmates of jails should be regared as unwilling wards of the sheriff should not in any way to subsidize their incarceration directly.

It may be well to note the Federal Rules of Civil Procedure

#1. Scope of Rules, they SHALL be construed to secure the JUST, speedy, and inexpensive determination of EVERY action,

#8f All pleadings SHALL be so construed as to do SUBSTANTIAL justice, and

#9b Malice, intent, knowledge, and other condition of mind of mind of a person MAY be averred GENERALLY.

This writer is of the view that USC Tite 28 Section 1343 parts 3 & 4 need not specifically be assurted by the plaintiff, as such parts are an intrinsic function of a federal court under the violations as claimed in the Complaint. This would particully apply to violations of the 14th amendment which do not seem to need statues to prosecute violations, this would seem to generally apply to 42 USC Sec. 1983. The appealed order is based on findings of law by a court. What constitutes a violation of the 14th amendment (par. 4) equal protection, due process and prohibited state conduct clauses (par. 1) of the Complain (App. 1), is some-

thing members of courts have agreed thru their oath of office to uphold the federal constitution. This is also an implied contract by the exceptance of office to the bench. There isn't any stipulation in the federal constitution, oath of office or implied contract, that litigants must need to use "magic pass words" and /or circuity of actions to receive the protection of the federal CONSTITUTION. Members of a court may regard there oath of office as an amenity, but courts may not. CONSTITUTIONAL rights are rights, not a matter of discretion. The failure of courts to take judicial notice of the federal CONSTITUTION, except on rare occassions, requires a challenger to print a textbook on matters members of courts must be presumed to know. The failure of lower courts to passionately attack problems of obvious CONSTITUTIONAL violations demonstrate convincingly that p.ocedures for denial of CONSTITUTIONAL right are condoned in principle.

It is apparent that commity is code that a federal court should not interfere with state conduct, surly self control of state agents have not been demonstrated on the pages of history. The appealed order (App. 12) seems places reliance of the State Commission of Correction for management of jails. The plaintiff is under no obligation to exhaust state remedies. The defendant is on notice of the assurted equal protection, due process and prohibited state conduct (Complaint App. 1) the clauses stated in the federal 14th Amendment, which is substantially directed against people that act thru authority of state law. There is no exception of any degree of violation in the 14th amendment for a county sheriff.

POINT 1. and CONCLUSION

The thrust of the appealed order seems to object to a short form of a complaint instead of a long form, with added clauses like cruel and unusual punishment to show the choice of having a tooth pulled or having tooth pain. Surly legal "hocus-pocus" framing of clauses of a complaint can not be required by a court to get rights, when the 14th amendment fails to have such a clause, such clauses can only be the option of the person that puts together a complaint. A federal court is enjoined by the injunctions of personal rights substance clauses of the 5th, 8th, 9th and 10th Amendment of the federal CONSTITUTION from failure to grant any demanded order that lacks due process and equal protection, and any appeal to an appellete court with such a violation should be considered a right of certain reversal.

If the cheap charade of ignorance thru the affidavit face contingent is to be sucessfull to avoid punitive and exemplary damages, the natural conclusion of condoning must be reached by everyone. The foot draging of federal courts to freely exercise contol over "state police power" shows frank judicial betrayel to be a credible assumption thru assorted gimmickry of impediments.

C O N C L U S I O N

The appealed Order granting dismissal of the Complaint should be reversed.

SUBMITTED,

Donald Schanbarger
Plaintiff - Appellant
Salem, New York 12865